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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,533	01/19/2001	Helen Hardman Howlett-Campanella	HOWLETT-38283	1419
7	590 06/14/2002			
Scott W. Kelley KELLY BAUERSFELD LOWRY & KELLEY, LLP 6320 Canoga Avenue, Suite 1650			EXAMINER	
			AMERSON, LORI BAKER	
Woodland Hills, CA 91367			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 06/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Description			Application No.	Applicant(s)			
Examiner	Office Action Summary		1				
Lori Baker Amerson 3764 Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.195(a). In no sevent, however, may a reply be linely fled to the communication of the communicatio			Examiner	HARDMAN			
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This action is FINAL. 2b This action is non-final.	A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
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1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4) Interview Summary (PTO-413) Paper No(s) 5) Notice of Informal Patent Application (PTO-152) 6) Other:							
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)							
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Response to Arguments

Applicant's arguments filed 1-22 have been fully considered but they are not 1. persuasive. In response to applicant's argument that the Edelson reference is not used as yoga mat, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See In re Casey, 152 USPQ 235 (CCPA 1967) and In re Otto, 136 USPQ 458, 459 (CCPA 1963). In response to applicant's argument that the Edelson reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443. 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Edelson can be used as an exercise mat [col. 1, line 30] which serves the same purpose as a yoga mat used for exercising. In response to applicant's arguments that the Dionne reference includes no teaching or suggestion to be used as a golf mat and is completely devoid of the structure recited in the claimed invention. The examiner contends that the Dionne reference shows the design defines multiple segments of equal parallel areas transverse and longitudinal to the axis. Indicium is arranged in each quadrant and comprises intersecting lines forming ninety-degree angles. The applicant should note that a change in ornamental

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design having no mechanical function is an aesthetic design consideration within the skill of the art. <u>In re Seid</u>, 161 f.2d 229, 73 USPQ 431 (CCPA 1947). Furthermore, a mere arrangement of printed matter, though seemingly a "manufacture," is rejected as not being within the statutory classes. See *In re Miller*, 418 F.2d 1392, 164 USPQ 46 (CCPA 1969); *Ex parte Gwinn*, 112 USPQ 439 (Bd. App. 1955); and *In re Jones*, 373 F.2d 1007, 153 USPQ 77 (CCPA 1967). See MPEP 706.03(a).

Claim Rejections - 35 USC § 103

- 2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 3. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edelson [4985952] in view of Dionne et al [5645494]. The rejection from the previous office action, paper no. is incorporated herein.
- 4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the

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statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Baker Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Monday thru Friday from 8-5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703-308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

Lba June 11, 2002

> Michael A. Brown Primary Examiner

Michael 4-Br